



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advanced Micrographics, Inc.

File: B-245319.2

Date: January 8, 1992

Nicholas Barrack for the protester.
James F. Trickett, Department of Health & Human Services,
for the agency.
Stephen Gary, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Exclusion of a proposal for the microfilming of medical library documents from the competitive range, where solicitation stated that technical factors were paramount, was proper, where record shows agency had reasonable basis for finding the proposal technically unacceptable.
2. A technically unacceptable offer properly may be excluded from the competitive range irrespective of low price.

DECISION

Advanced Micrographics, Inc. (AMI) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. NLM-91-108-KEE, issued by the Department of Health & Human Services (HHS) for the microfilming of documents in the collection of the National Library of Medicine (NLM).¹ AMI asserts that the agency improperly awarded a contract for these services to a higher-priced offeror, when it could have obtained them from AMI at a substantially lower price.

We deny the protest in part and dismiss it in part.

¹Part 2 of the solicitation--the only portion proposed on by AMI--provided for preservation microfilming; part 1, not relevant here, provided for bibliographic control and preparation of documents for microfilming.

The solicitation called for the preservation microfilming of the documents, many of which, since the NLM is a national repository for medical literature, are unique and irreplaceable. The RFP stated that the work would consist of filming the material to archival standards, producing a camera negative and a master print, and boxing and labeling the film. In the evaluation of proposals, the solicitation stated that paramount consideration would be given to technical factors rather than to price. The solicitation also cautioned that failure to provide sufficient information to evaluate a proposal in accord with the stated evaluation criteria could result in rejection of the proposal without further consideration.

The RFP stated that the evaluation criterion that would be given the greatest weight was the offeror's "understanding of the requirement and technical approach." Under that criterion, offerors were required to submit a detailed narrative work plan, flow chart, diagrams, and schedules, showing the labor mix by task and how each task would be carried out. In addition, the RFP stated that these "narratives and flow chart must clearly delineate the measures and procedures which would be adopted to achieve the required level of quality control." Also, under this criterion, offerors were required to submit a test sample. With regard to this sample, the solicitation provided the following:

"Prior to the submission of the proposal offerors shall film volumes from the NLM collection. . . . Sample reels of microfilm, camera negative, print master and service copy must be submitted with the offeror's proposal. . . . The microfilm copies will be evaluated for image quality and for adherence to NLM and ANSI/AIIM technical specifications."

The referenced technical specifications, in turn, concerned matters such as the degree of resolution that had to be met.

Nine offerors submitted proposals under the RFP. Of those, HHS determined that only the proposals of Research Publications (the ultimate awardee) and one other firm were technically acceptable. The agency established a competitive range consisting of the proposals of those two firms, and excluded from further consideration proposals from AMI and the other six offerors. When AMI learned of the contract award to Research Publications, it protested the rejection of its own proposal.

AMI asserts that it should have received the award on the basis of its lower price--\$81,240--compared to the contract price of \$156,340. Alternatively, AMI argues that the award

was improper because the procurement should have been conducted under sealed bid procedures rather than negotiated procedures.

The evaluation of proposals and the determination of whether an offeror is in the competitive range are matters within the discretion of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them. Automated Datatron, Inc.; California Image Media, Inc., B-215399; B-215399.2, Dec. 26, 1984, 84-2 CPD ¶ 700; Essex Electro Eng'rs, Inc.; ACL-Filco Corp., B-211053.2; B-211053.3, Jan. 17, 1984, 84-1 CPD ¶ 74. Generally, offers that are technically unacceptable as submitted and that would require major revisions to become acceptable may be excluded from the competitive range. Id. Where a proposal is found to be technically unacceptable and therefore outside the competitive range, the agency has no duty to hold discussions with the offeror. Id.; Zuni Cultural Resource Enter., B-208824, Jan. 17, 1983, 83-1 CPD ¶ 45.

In reviewing an agency's technical evaluation and competitive range determination, however, we will not independently evaluate proposals; rather, we will consider only whether the evaluation had a reasonable basis and was in accord with the listed evaluation criteria, and whether there were any violations of procurement statutes or regulations. Management Training Sys., B-238555.2, July 17, 1990, 90-2 CPD ¶ 43.

We find that HHS's evaluation and competitive range determination were reasonable.

The evaluation panel noted serious deficiencies in AMI's proposal, several of which concerned the required sample of the company's work. The evaluators found, for example, that AMI's sample consisted only of a 36-inch strip of 16 mm film (the microfilming was to be done on 35 mm film); the density of the film was too low; the film contained no resolution targets for determining whether resolution complied with NLM and other technical specifications; and the sample was not filmed from NLM materials, as required by the RFP. The panel concluded from the sample and from the proposal generally that the offeror was neither equipped for nor experienced with the production of 35 mm microfilm.

Among other major weaknesses, the evaluators found that AMI's proposal had very little narrative detail on any of the steps described in RFP's statement of work; included no flow charts or diagrams; failed to specify the proposed labor mix and the details of a quality control plan; did not mention any of the NLM's specifications; and did not provide

for quality control on film duplicated by the subcontractor. Based on these deficiencies, AMI's proposal received an average score of only 11.5 points out of a possible 100 from the four evaluators, ranking it seventh out of the nine offers received. By way of comparison, the awardee's initial score was 83.75, and the score of the other competitive range offeror was 80. The agency concluded that AMI's technical proposal was so deficient that it was not reasonably susceptible of being made acceptable; accordingly, HHS excluded AMI from further consideration on the ground that its proposal was technically unacceptable.


We have examined those major portions of AMI's proposal that HHS considered most deficient, and have found no basis for questioning the agency's conclusions. For example, our review of AMI's proposal confirms the general lack of detail concerning how the firm would meet specific RFP requirements; the awardee's initial proposal, in contrast, contains significantly more detail. AMI does not argue that the agency's evaluation in these areas is incorrect. The protester does assert that its proposal may have been scored too low in a less important evaluation category, corporate capability, because the list of references required under that criterion was included with its business proposal rather than its technical proposal. The lack of a reference list, however, accounted in only a minor way for AMI's low score in this area; the record shows that another, far more significant weakness was AMI's lack of demonstrated experience with projects of similar nature and complexity. Based on the weaknesses in the major evaluation areas and the protester's failure to show that the evaluation was unreasonable, we find that the agency's evaluation and competitive range determination were proper. Management Training Sys., supra.

AMI's asserts that it was entitled to the award based on low price. However, a technically unacceptable offer can be excluded from the competitive range (and, generally, from consideration for award) irrespective of its low price. Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94.

AMI argument that sealed bidding should have been used, rather than negotiated procedures, is dismissed as untimely. Under our Bid Protest Regulations, where a protest is based on an alleged impropriety apparent in the solicitation--here, the procurement procedures to be used--the protest must be filed not later than the closing date for receipt of

initial proposals, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); Hogan Property Co., B-242795; B-242795.2, June 7, 1991, 91-1 CPD ¶ 549. Since AMI did not raise this objection until after award had been made, the allegation is untimely and will not be considered. Id.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel